IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Date of decision: 01.10.2007

Writ Petition No. 1436 (S/S) of 2007

A.F.R. (Approved for Reporting)
Not approved for Reporting

(Initial of Judge)

Date: 01.10.2007

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTRAKHAND AT NAINITAL

Writ Petition No. 1436 (S/S) of 2007

Mahipal Singh S/o Late Sri Govind Singh
R/o Village Kaleti, P.O. Gurburani,
Tehsil Didihat, District Pithoragarh

…… Petitioner.

Versus

(1) State of Uttarakhand through Principal Secretary Forest Department, Government of Uttarakhand, Dehradun.
(2) Principal Chief Conservator of Forest, Uttarakhand, Nainital, Camp at 87-Rajpur Road, Dehradun.
(3) Chief Conservator of Forest, Kumaon Region, Nainital.
(4) Divisional Forest Officer, Pithoragarh, Forest Division, Pithoragarh.

……. Respondents.

Hon. Prafulla C. Pant, J.

Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

(2) By means of this writ petition, the petitioner has sought writ in the nature of mandamus commanding respondents to appoint the petitioner on regular basis in a Group ‘D’ post under U.P. Recruitment of Dependants of Government Servants Dying In Harness Rules, 1974.

(3) It is admitted that petitioner’s father Govind Singh was a daily wage with the respondent Forest Department of State of Uttarakhand. It is argued on behalf of the petitioner that petitioner’s father was serving for more than 20 year with the Department. As such, after his death the petitioner is entitled to the appointment on compassionate ground. From the petition itself it is clear that petitioner’s father was working on daily wages on fixed amount of Rs.2550/-per month. It is a third round of litigation initiated by the petitioner. In the first round he moved Writ Petition No. 1078 of 2005 (S/S) relating to same relief which was decided on 14.02.2006, directing the respondents to consider the case of the petitioner. After the decision in said writ petition, he filed another Writ petition No. 724 of 2006 (S/S), which was dismissed as infructuous on 26.06.2006 and finally the present petition.

(4) Only the dependants of Government servants died in harness can claim appointment on compassionate ground under aforesaid Rules of 1974. Rules 2(a) defines ‘Government servant’ to whom the Rules are applicable, which reads as under:-

"(a) *"Government Servant" means a Government servant employed in connection with the affairs of Uttar Pradesh who-*

(i) was permanent in such employment; or

(ii) though temporary had been regularly appointed in such employment; or

(iii) through not regularly appointed, had put in three years' continuous service in regular vacancy in such employment.

Explanation. - "Regularly appointed" means appointed in accordance with the procedure laid down for recruitment to the post or service, as the case may be;"

(5) Learned counsel for the petitioner submitted that the petitioner was in regular service of respondent Department and covered under clause (iii).However, he could not show when the appointment letter was issued to Govind Singh, father of the petitioner, against a regular vacancy and in which pay scale. As such it cannot be said that the petitioner's father was working for more then three years in a regular vacancy. Learned counsel for the petitioner submitted that in Putti Lal's case, the apex court has directed the State Government to formulate the scheme and the regularization process was on. Simply because the regularization process was on, it cannot be said that the petitioner's father completed three years of continuous service against a regular vacancy. From the petitioner itself it is clear that the petitioner too has already engaged on daily wages (after this Court passed the order in Writ Petition No. 1078 of 2005 (S/S) and

before Writ Petition No. 724 of 2006 (S/S) was dismissed) by the respondent Department, but he wants regular appointment.

(6) For the reasons as discussed above since petitioner's father was not covered under the definition of 'Government Servant' under Section 2 of U.P. Recruitment of Dependants of Government Servants Dying In Harness Rules, 1974, this Court is of the view that as of right the petitioner cannot claim compassionate appointment and that too against a regular post. Therefore, this writ petition has no force and is livable to be dismissed. The same is dismissed in limine. No order as to costs.

(Prafulla C. Pant, J.)

Dt.01.10.2007.
NS